

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13937 of 2024**

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M/S AKSHAR CREATION & ORS.

Versus

INDIAN BANK & ORS.

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Appearance:

MR SN SOPARKAR SR.ADV. WITH MR SHAKTI S JADEJA(5491) for the
Petitioner(s) No. 1,2,3

RITESH D PATADIA(6460) for the Respondent(s) No. 1

MR ADITYA PANDYA FOR MR SANDIPKUMAR N SOLANKI(9119) for the
Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 25/09/2024****ORAL ORDER**

1. Permission to delete the respondent no.3 - Debt Recovery Appellate Tribunal, Mumbai, as prayed for, is granted. Amendment be carried out forthwith.

2. The proposed draft amendment dated 25.09.2024 is taken on record. The same is allowed. Amendment be carried out forthwith.

3. Mr.S.N. Soparkar, learned Senior Counsel appearing with Mr.Shakti Jadeja, learned advocate for the petitioners submits that the petitioners herein are the original borrowers and have preferred Securitization Application No.118 of 2020, which came to be allowed. Reliance is placed on paragraph 15 of the order dated 18.02.2022, duly produced at page 38 wherein, the learned Tribunal by the said order, quashed and set aside the auction sale notice dated 15.02.2020, transaction of sale in favour of the respondent no.2 dated 07.03.2020 and the sale certificate dated 03.07.2020 in

favour of the private respondent no.2 herein. It was further directed to refund the sale amount within a period of two weeks from the date of the said order. The petitioners having deposited substantial amount against the outstanding dues of the bank, the respondent bank was directed to restore the possession of the secured asset to the petitioners herein within two weeks.

3.1. It is submitted that the respondent - bank has challenged the said order by filing Appeal No.63 of 2022 before the learned Debt Recovery Appellate Tribunal, Mumbai, which came to be allowed by the impugned order dated 04.09.2024, which is duly produced at Annexure-A at page 25. It is submitted that the auction purchaser in the said appeal, filed M.A. No.43 of 2022, seeking refund of the amount with interest, which came to be withdrawn upon the appeal having been allowed. It is submitted that the impugned order passed by the learned Debt Recovery Appellate Tribunal, Mumbai is erroneous wherein, the respondent no.1 after complying partially the order of the learned Debt Recovery Appellate Tribunal, Mumbai dated 18.02.2022, challenged the same by preferring the aforesaid Appeal No.63 of 2022.

3.2. It is submitted that the respondent - bank has failed to comply with the mandatory rules of physical possession i.e. Rules 8(1) and 8(2) as also Rule 9(3) of the Security Interest (Enforcement) Rules, 2002. It is submitted that there are other contentions also, which are available to the petitioners herein whereby, the order passed by the learned Debt Recovery Appellate Tribunal, Mumbai requires interference.

4. Mr.Aditya Pandya, learned advocate appearing for

Mr.Sandipkumar Solanki, learned advocate for the respondent no.2 submits that no interference is called for in the order passed by the learned Debt Recovery Appellate Tribunal, the same having been passed, taking into consideration the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

5. Mr.Soparkar, learned Senior Counsel, in the course of hearing, submits that after the order passed by the learned Debt Recovery Tribunal dated 18.02.2022, the possession is with the petitioners herein.

6. Considering the aforesaid, issue notice, returnable on 22.10.2024. Mr.Ritesh Patadia, learned advocate appears on caveat and waives service of notice for the respondent no.1 and Mr.Aditya Pandya, learned advocate appears for Mr.Sandipkumar Solanki on caveat and waives service of notice for the respondent no.2. Respondent no.3 - Debt Recovery Appellate Tribunal, Mumbai is deleted.

7. In the meantime, parties to maintain status-quo till the next returnable date. Direct service is permitted.

(VAIBHAVI D. NANAVATI,J)

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